IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11406 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

ARVINDBHARTI DHANRAJBHARTI GOSWAMI

Appearance:

1. Special Civil Application No. 11406 of 2001

MR HARDIK C RAWAL for Petitioner No. 1

MR GK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/06/2002

ORAL JUDGEMENT

The petitioner, Gujarat State Road Transport Corporation, has challenged the Award dated 15.3.2001, passed by the Labour Court, Junagadh in Reference (LCJ) No.69 of 1995. By the aforesaid Award, the Labour Court

directed the petitioner to reinstate the respondent-workman with 30% back wages.

At the relevant time, the respondent workman was working as a driver at the Una Depot of the petitioner-Corporation. It was alleged that on 8.10.1991, when his duty was on Una-Rajpara Road, it was found that he was under the influence of alcohol. Accordingly, the authorities changed the departure time of the bus from 11.30 to 12.30 and another driver was given the charge of the bus. It is also alleged that since the respondent-workman misbehaved with the Officers of the petitioner, the Officers were compelled to ask for police assistance.

In respect of the above incident, the respondent-workman was subjected to a departmental enquiry. On conclusion of the departmental enquiry, the respondent was dismissed from service by an order dated 17.6.1993.

The respondent unsuccessfully challenged the above dismissal order by filing a departmental appeal.

Therafter, the respondent-workman raised an Industrial Dispute, being Reference (LCJ) No.69 of 1995. The Labour Court, by the impugned Award, partly allowed the Reference and directed the petitioner to reinstate the respondent in service with 30% back wages. The Labour Court also passed an order, withholding one yearly increment with permanent effect. The aforesaid Award of the Labour Court dated 15.3.2001 is impugned in this petition.

This Court, while admitting the matter, has stayed the order of the Labour Court. Of course, this Court has not passed any specific order regarding compliance of the statutory provisions of Section 17-B of the I.D. Act. Today, this matter is disposed of finally.

Looking to the facts of the case, in my view, it is not necessary that the extreme penalty of dismissal should have been awarded to the concerned workman. In the enquiry, of course, it was proved that he was under the influence of alcohol, though in the criminal trial, that charge was not established against him. Under the circumstances, while confirming the order of reinstatement, which is passed by the Labour Court while exercising the powers under Section 11-A of the I.D. Act, I am of the opinion that withholding of 70% of back

wages is not enough punishment.

In an identical matter, i.e. Special Civil Application No.11610 of 2000, decided on 20.8.2001, this Court dealt with the case of a driver under the influence of alcohol and the following order was passed in the above Special Civil Application :-

> " ... ...
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> In the facts and circumstances of the case, therefore, the order of the Labour Court is required to be modified so far as imposition of penalty is concerned and it is directed that the concerned workman will not be entitled to any back wages during the intervening period except that he will be entitled to all other notional benefits during the intervening period except payment of back wages. The respondent will be entitled to the benefits of all notional benefits during the intervening period and his service should be treated as continuous for all practical purposes except for payment of back wages during the intervening period. The respondent was serving as a driver and it seems that he has also not behaved properly and had indulged in an act of indiscipline and since it was found by the Department that he was under the influence of alcohol, though, of course, that charge is not proved in the criminal court, it would be open for the S.T. Corporation, considering the fact that he is holding such a sensitive post of driver, to post him on any other equivalent post, if the Corporation so thinks fit. Over and above the same, the respondent-workman is subjected to penalty of withholding of one increment with future effect. In order to see that, in future, he may be careful, there should be some punishment which is required to be imposed on him so that he may think twice before behaving in such a manner in future, especially when the lives of the passengers are in his hands when he drives the vehicle. The order of the Labour Court is required to be modified accordingly to the aforesaid extent and the

> same is substituted to the aforesaid extent, i.e. reinstatement without back wages for the intervening period and withholding of one increment with future effect. It is clarified that the respondent will be entitled to regular pay, etc., from the date of the Award of the Labour Court and naturally, he will be entitled to back wages from the date of the Award of the Labour Court till he is reinstated in service. Appropriate order of reinstatement will be passed within a period of one month from today. The respondent is also subjected to penalty of withholding of one increment with future effect. The order of the Labour Court is accordingly modified. Rule is made absolute to the aforesaid extent with no order as to costs.
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> ... ..."

In the facts and circumstances of the case, therefore, this petition is partly allowed. The order of the Labour Court is modified to the following extent :-

The S.T. Corporation to reinstate the petitioner on any other post except on the post of driver, but after protecting his pay. For all other purposes, the seniority of the petitioner is ordered to be protected. Since the misconduct is already proved and the petitioner was holding such a sensitive post and yet he was found in a drunken condition, in my view, no back wages are required to be given to the petitioner. The Order of the Labour Court awarding back wages to the extent of 30% is also quashed and set aside. The S.T. Corporation is directed to give benefit of Section 17-B of the I.D. Act from the date of the order of the Labour Court till the petitioner has been given reinstatement, as indicated above and he should be reinstated within a period of one month from today. The order of the Labour Court, imposing penalty of withholding of one increment, with permanent effect is maintained.

The petition is partly allowed to the aforesaid extent. Rule is made absolute accordingly, with no order as to costs.

17th June, 2002 (P.B.Majmudar, J.)

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(apj)